

AUG 7 2008

PATRICK E. NOEL  
Pro Se Petitioner  
V88778  
CSP Sacramento  
PO Box 290066  
Represa, CA. 95671-0066

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. \_\_\_\_\_

CV 08

3777

MHP

(PR)

E-filing

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK E. NOEL,	) Mendocino County
	) No. CR-04-58628002
	)
Petitioner,	) Appeal No. A110859
	)
v.	) California Supreme Court
	) No. S151361
JAMES WALKER, WARDEN,	)
	) MOTION TO HOLD
Respondents.	) PROCEEDINGS IN
	) ABEYANCE;
	) POINTS AND
	) AUTHORITIES

**MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Pro Se Petitioner PATRICK E. NOEL, having duly filed a petition for writ of habeas corpus in the above-entitled action pursuant to 28 U.S.C. sec. 2254, hereby moves the Court to hold further proceedings in abeyance pending the decision of the California Supreme Court on a petition for writ of habeas corpus to

1 be filed with that court shortly, and a copy of which shall be served on the clerk of  
2 this court.

3  
4 **MEMORANDUM OF POINTS AND AUTHORITIES**


5 In *Rhines v. Weber* (2005) 544 U.S. 269, 278, the Supreme Court held that a  
6 District Court should stay a petition for writ of habeas corpus containing both  
7 exhausted and unexhausted claims (“a mixed petition”) if the petitioner had good  
8 cause for the failure to completely exhaust all claims; the unexhausted claims are  
9 potentially meritorious; and there is no indication the petitioner engaged in  
10 dilatory tactics. This case satisfies *Rhines* and petitioner’s request for stay should  
11 be granted.

12 As the attached declaration makes clear, petitioner was represented by  
13 appointed appellate counsel in state court. Appointed counsel raised the four  
14 claims raised in this petition, which have been fully exhausted in state court.  
15 Petitioner believes that three additional claims are meritorious and has already  
16 presented the three new claims to the Mendocino County Courts, which denied his  
17 petition for writ of habeas corpus on May 6, 2008. The same three additional  
18 claims will be presented to the California Supreme Court imminently. Petitioner  
19 does not want to delay the filing of his petition for writ of habeas corpus in this  
20 Court given the requirements of the Anti-Terrorism and Effective Death Penalty  
21 Act of 1996 (“AEDPA”).

1           Petitioner has shown good cause under *Rhines*. Petitioner is pursuing the  
2 unexhausted claims with reasonable diligence. The unexhausted claims are  
3 potentially meritorious. Finally there is no indication that petitioner has engaged  
4 in dilatory tactics. On the contrary, petitioner has pursued all of his claims  
5 diligently. Petitioner has no reason to delay. He is not avoiding a death sentence.  
6 Rather he seeks reversal and/or reduction of his 41-year state prison sentence and  
7 is anxious for his claims to be litigated. For all of these reasons, petitioner's  
8 request for a stay should be granted and the proceedings should be held in  
9 abeyance pending exhaustion of his unexhausted claims.  
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14 DATED: July 24, 2008

Respectfully submitted,

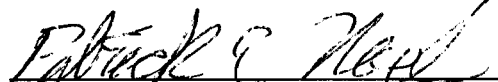
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17 PATRICK E. NOEL  
18 Pro Se Petitioner  
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1 I, PATRICK E. NOEL, declare:

2 1. I am the petitioner in this matter. I was convicted in Mendocino  
3 County case No. CR-04-58628002, on July 22, 2005, and my Petition for Review  
4 was denied by the California Supreme Court on May 23, 2007. During the appeal  
5 I urged my appointed attorney, Judith Kahn, to raise additional appellate issues on  
6 my behalf, including the three additional claims still pending in state court. Ms.  
7 Kahn refused.

8 2. I am indigent and cannot hire an attorney to represent me in this  
9 Court or in further state court post-conviction proceedings. However, my mother  
10 was able to provide a small amount of money to hire Randi Covin, California State  
11 Bar No. 168422, to assist me with my Pro Se pleadings. Ms. Covin completed her  
12 evaluation of my case in March 2008 and I filed a petition for writ of habeas  
13 corpus in the Mendocino County Courts in early April 2008, raising the three new  
14 claims. My petition was denied on May 6, 2008. The new claims will be  
15 presented to the California Supreme Court as soon as possible.

16 I declare under penalty of perjury under the laws of the state of California  
17 that the foregoing is true and correct. Executed this 21 day of July, 2008, at  
18 Represa, California.



19 PATRICK E. NOEL  
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